**Ofwat – Written Evidence (CMP0035)**

**Introduction**

1. Ofwat is the economic regulator of water and sewerage services in England and Wales. We are a non-ministerial department with regulatory and enforcement powers, including with respect to competition related matters, covering monopoly companies operating in the water sector.

2. This document is a response by Ofwat to the House of Lords’ EU Internal Market Sub-Committee Brexit and Competition Policy Inquiry. We have had the benefit of seeing the response of the Competition and Markets Authority (CMA) and endorse the general perspective they bring to these issues on matters of concurrent jurisdiction.

3. Due to the highly regulated and domestic nature of the water sector in England and Wales, Ofwat considers the impact of EU Exit to be slightly diminished in comparison with other sectors when it comes to competition policy and competition law enforcement. In that respect, we provide here only a brief response to select questions of relevance for Ofwat.

4. We look forward to working with HM Parliament and Government, the CMA and other relevant departments and agencies to ensure that competition policy promotes a vibrant, resilient and customer focused water sector during and after exit from the EU, to 2020 and beyond.

**Responses to General Questions**

**What should competition policy in the UK set out to achieve? What guiding principles should shape the UK’s approach to competition policy after Brexit?**

6. Overall, Ofwat believes that competition – including in regulated sectors – can achieve positive outcomes for consumers, innovation and the economy, alongside appropriate mechanisms to protect customers where competition or markets do not work effectively. While we are well aware of the challenges presented by the introduction of competition in the sector, and how regulation may in some cases be necessary to protect consumers, we believe the disciplines of markets and the information markets disclose in particular can help ensure consumers get the best value from their water service providers.

7. As the new retail market for non-household customers in England becomes established following its opening in April 2017, it will also be important as far as possible that the industry can operate within a predictable and stable framework, to reinforce a culture of compliance and help ensure the benefits of competition can be realised.
Responses to Questions on Mergers

What opportunities does Brexit present for the UK to review national interest criteria for mergers and acquisitions? What might the advantages and disadvantages of this be?

8. Ofwat believe it is for government to consider these matters and to formulate policy responses as appropriate. Ofwat is of course available to work with the government and provide advice for this assessment on any water sector related issues.

Does the Competition & Markets Authority (CMA) have the capacity to manage an anticipated increase in UK merger notifications post-Brexit? Could regulators with concurrent competition powers, e.g. Ofgem and Ofcom, play a greater role?

9. In principle, Ofwat believes it has the capacity to manage mergers in the water sector, and we will support colleagues in the CMA as required. That being said, we do take note that in its response the CMA has signalled a need for sufficient resources following Exit in order to enable it to deal with a likely increase in mergers and anti-trust cases.

10. Any resource constraints on the CMA following Exit could potentially have a knock-on impact on Ofwat and the water sector. This is because we are introducing new markets in the sector, including the newly opened business customer retail market in England, as well as markets for water resources and bioresources. It is likely that there will be competition issues in these new markets and Ofwat and the CMA expect to work together on such issues, combining Ofwat's sector and regulatory expertise with the CMA's greater expertise in competition casework. Any stretch on the CMA's resources could reduce our ability to achieve this joint working.

General Comment on State Aid

11. In general terms, state aid has not been a major issue in the water sector, and Ofwat believes Brexit may have little impact in this area. Where they have arisen, state aid issues have been addressed satisfactorily in the past, for example in the case of the Thames Tideway Tunnel, and in support for South West Water customers¹. We do not see any immediate pressure to change this approach.

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¹ The government support package to Thames Tideway Tunnel was subject to State Aid rules. In their 2011 consultation on the response to the Walker Review, Government was explicit about the need to consider EU state aid: 4.17 In addition, South West Water continues to fulfil its public service obligations at the moment without any State Aid. The justification for Government assistance is based on the way that water privatisation was undertaken which the Government is looking to redress. We will need to ensure that any assistance for the South West complies fully with EU State Aid rules.